

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PRETIUM CANADA COMPANY,)	
a Nova Scotia unlimited liability company,)	C.A. No.
)	
Plaintiff,)	
)	
v.)	
)	
GREEN GROUP ASSOCIATES, LLC,)	
a Delaware limited liability company,)	
)	
Defendant.)	

COMPLAINT

Pretium Canada Company (hereinafter “plaintiff”), by and for its complaint against Green Group Associates, LLC. (hereinafter “defendant”) respectfully alleges the following:

1. The plaintiff is an unlimited liability company organized and existing under the laws of Nova Scotia, Canada, and having its principal place of business at 3300 Route Transcanadienne, Pointe-Claire, Quebec, H9R 1B1 Canada.

2. The defendant is a limited liability company, organized and existing under the laws of the State of Delaware, and having its principal place of business at Edificio Arriaga 77, 3 Andar, Sala 305, Funchal 9000, Madeira, Republic of Portugal.

3. **Jurisdiction.** This is a dispute between a citizen of a foreign state and a citizen of this State where the subject matter in controversy exceeds the sum of \$75,000.00, exclusive of costs and interest, therefore jurisdiction is proper pursuant to 28 U.S.C. §1332(a)(2).

4. **Venue.** The defendant resides within this judicial district therefore venue is proper pursuant to 28 U.S.C. §1391(a).

5. On or about January 18, 2006, the plaintiff contacted an English business called Independent Property Rental (“IPR”) to arrange for the purchase of a Husky XL500 packaging machine. IPR brokered a transaction whereby the defendant would sell the machine to the plaintiff.

6. The terms of the contract between the plaintiff and the defendant called for the defendant to ship “CIF” to the plaintiff’s facility in Point Clare, Quebec, Canada, for a total purchase price of 232,925.00 Euros, which consisted of 210,000.00 Euros as the cost of the goods and 22,925.00 Euros for the costs of shipping and insurance.

7. IPR issued an invoice to the plaintiff in the above amounts. The plaintiff paid the entire purchase price to the defendant.

8. Pursuant to the terms of the parties’ contract, the defendant was under a duty to deliver the machine to the plaintiff’s facility, and was further under a duty to procure property and casualty insurance to protect the plaintiff’s interest in the machine while in transit.

9. The machine was shipped in three (3) overseas containers. The first container arrived at the plaintiff’s place of business with evidence of lack of proper sealing, causing significant rust to the container and its contents. The plaintiff accepted the first container but documented the damage.

10. On or about October 19, 2006, the second container was involved in a major motor vehicle accident while in the hands of defendant’s carrier and in route to the plaintiff’s facilities. The equipment in the container suffered significant damage, which rendered the machine inoperable and of no use to the plaintiff. On the same day, the third container arrived at the plaintiff’s facilities. The plaintiff refused delivery of the third

container in light of the catastrophic loss of the second container.

11. On or about October 20, 2006, the plaintiff, through its Canadian counsel, demanded return of the full purchase price.

12. The defendant has failed and/or refused to return the purchase price to the plaintiff. Instead, the defendant told the plaintiff it had to file a claim against the shipping company's liability insurer.

13. The plaintiff has also demanded that the defendant provide it with information concerning the insurance which the defendant was under a duty to purchase pursuant to the invoice terms. The defendant has failed and/or refused to provide that information to the plaintiff.

14. The defendant has breached the parties' contract by (i) failing to deliver conforming goods to the plaintiff, justifying the plaintiff's rejection of same, and/or (ii) failing to procure property and casualty insurance to protect the plaintiff's interest in the machine while in transit.

15. As a direct and proximate result of the defendant's breach of the contract, the plaintiff has suffered the loss of the purchase price of 232,925.00 Euros. As of the date of filing of this Complaint, the conversion rate set forth in the Wall Street Journal is 1.3487 US dollars per Euro, making the US dollar equivalent is \$314,145.94.

16. As a further direct and proximate result of the defendant's breach of contract, the plaintiff has in good faith, and without unreasonable delay, incurred costs and expenses to procure a substitute machine and to modify and refurbish the substitute machine to bring it up to the performance level and specifications of the defendant's machine in the total amount of \$379,414.00. The difference between the cost to the

plaintiff for procuring substitute goods and the contract price is \$65,268.06 and this amount is claimed as an additional damage herein.

WHEREFORE the plaintiff demands judgment in its favor and against the defendant for the sum certain amount of \$379,414.00, together with pre-judgment interest at the legal rate and the costs of this action.

Dated: April 13, 2007

FERRY, JOSEPH & PEARCE, P.A.

/s/Rick S. Miller

Rick S. Miller (#3418)
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Of Counsel:

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Attorneys for Plaintiff

(REV. 07/89)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS OF THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS Pretium Canada Company, a Nova Scotia unlimited liability company. b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>N/A</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS Green Group Associates, LLC, a Delaware limited liability company.
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Rick S. Miller (#3418) FERRY JOSEPH & PEARCE, P.A. 824 Market Street, Suite 904 P.O. Box 1351 Wilmington, DE 19899-1351 (302)575-1555	ATTORNEYS (IF KNOWN)
II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY) <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> 1 U.S. Government <input type="checkbox"/> 2 U.S. Government Defendant </div> <div> <input type="checkbox"/> 3 Federal Question <input checked="" type="checkbox"/> 4 Diversity (Indicated Citizenship of Parties in Item III) </div> </div>	III. CITIZENSHIP OF PRINCIPAL PARTIES Plaintiff - Canadian Defendant - Delaware
IV. CAUSE OF ACTION (CITE THE U S CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTION STATUTES UNLESS DIVERSITY) Breach of Contract of Sale of Goods, Uniform Commercial Code	
V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)	

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 160 Stockholders Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<div style="display: flex;"> <div style="flex: 1;"> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability </div> <div style="flex: 1;"> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-- Med Malpractice <input type="checkbox"/> 365 Personal Injury -- Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Property Liability </div> </div>	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS -- Third Party 26 USC 7609	<input type="checkbox"/> 422 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 9 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Equipment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Right		

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)				
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Judge from Magistrate Judgment
VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION <input type="checkbox"/> DEMAND \$379,414.00 Check YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
VIII. RELATED CASE(S) (See instructions) IF ANY <u>N/A</u>				

 DATE April 13, 2007
 UNITED STATES DISTRICT COURT

SIGNATURE OF ATTORNEY OF RECORD /s/Rick S. Miller (#3418)

COVER.USD

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

07-201

Civil Action No. _____

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

APR 13 2007

(Date forms issued)

John W. Melvin
(Signature of Party or their Representative)

John W. Melvin
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action